

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN BARRERA,

Defendant and Appellant.

B218958

(Los Angeles County
Super. Ct. No. BA356179)

ORDER MODIFYING OPINION
[CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 15, 2010, be modified as follows:

1. On page 2, paragraph 2 is modified to read as follows:

On appeal, defendant contends that his admission that he suffered the prior conviction was not voluntary and intelligent because it was taken without a proper advisement and waiver of his constitutional rights, and that the \$30 court security fee was improper because the increase in the court security fee from \$20 to \$30 may not be imposed retroactively on offenses that were committed prior to the effective date of the legislation increasing the fee. Respondent states that the trial court erred in imposing sentence on defendant's attempted second degree robbery conviction

when it imposed a middle term of four years. We affirm defendant’s conviction, \$30 court security fee, and four year middle term sentence. Defendant’s admission of his prior conviction is reversed. The matter is remanded for a trial or admission concerning defendant’s alleged prior conviction.

2. On page 6, heading III and the following discussion are modified to read as follows:

III. Defendant’s Four Year Middle Term Sentence

Respondent states that the trial court erred in imposing sentence on defendant’s attempted second degree robbery conviction when it selected a middle term of four years. Defendant does not address the issue in his reply brief. The trial court imposed the proper middle term sentence.

We may consider on appeal respondent’s claim that the trial court imposed an unauthorized sentence absent an objection by respondent in the trial court. (*People v. Scott* (1994) 9 Cal.4th 331, 354 & fn. 17.) Section 213, subdivision (b) provides, “Notwithstanding Section 664, attempted robbery in violation of paragraph (2) of subdivision (a) [(second degree robbery)] is punishable by imprisonment in the state prison.” Section 18 provides, in relevant part, “Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years” Accordingly, the trial court properly sentenced defendant to a four year sentence consisting of the two year middle term under sections 213, subdivision (b) and 18 doubled to four years under the Three Strikes law. (§§ 667, subd. (e)(1) & 1170.12, subd. (c)(1).)

3. On page 7, the disposition is modified to read as follows:

The judgment of conviction, \$30 court security fee, and four year middle term sentence are affirmed. Defendant's admission of his prior conviction is reversed. The matter is remanded for a trial or admission concerning defendant's alleged prior conviction.

There is a change in judgment. The Petition for Rehearing is denied.

MOSK, J.

KRIEGLER, J.

I would grant rehearing.

TURNER, P. J.